

**A GK Land Sdn Bhd v Mega 3 Housing Sdn Bhd & Anor and
another appeal**

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS
C-01(NCVC)(W)-184–06 OF 2014 AND C-01(NCVC)(W)-185–06 OF
2014
ALIZATUL KHAIR, LIM YEE LAN AND NALLINI PATHMANATHAN
JJCA
C 21 FEBRUARY 2017

D *Civil Procedure — Locus standi — What constituted locus standi — Land
owner sued developer for damages for breach of joint venture agreement ('JVA') in
building water tank on public utility area earmarked for Tapak Gerai — Land
owner contended it owned the tapak gerai — Developer counter-sued land owner
stating tapak gerai was public utility area meant to be surrendered to state
government as state land as condition for subdivision of master land for
development — Developer sought declaration and order that tapak gerai was state
land and its title had to be surrendered to land office for cancellation — Trial court
dismissed developer's suit on ground it had no locus standi to ask for said reliefs as it
had no proprietary interest in tapak gerai — Whether decision wrong — Whether
issue not about locus standi but whether developer had legitimate cause of action
— Whether developer rightly seeking court's determination on issue that would in
turn determine whether it was liable to land owner for damages*

G *Land Law — Subdivision — Imposition of condition — State authority in
approving subdivision of land for development imposed condition that areas
designated for public amenities/utilities would not be given titles but had to be
surrendered to state authority to be maintained as public utility areas — Land
office mistakenly issued titles to land owner for public utility lots — Whether land
owner fully aware of condition attached to approval of subdivision and could not
take advantage of land office's mistake to say titles did not contain any condition for
their surrender — Whether land office's acceptance of quit rent payments in respect
of titles concerned could not operate as waiver or estoppel to prevent state
government from reclaiming public utility areas — Whether state government's
move to recover public utility areas was valid action to compel obedience to lawful
condition and did not contravene s 200 of the National Land Code or art 13(1) of
the Federal Constitution*

I The owner ('PTSB') of two pieces of agricultural land ('the lands') applied to
the Pahang State Government ('the Pahang Government') for approval to build
houses and commercial buildings on the lands. The Pahang Government's
executive council ('the State ExCo') approved PTSB's applications to change

the category of land use and to subdivide the lands on condition, inter alia, that 682 buildings in total (634 houses and 48 shop lots) would be built and that those subdivided lots that were designated for public amenities/utilities ('the public utility lots') would not be given titles but had to be surrendered to the Pahang Government. The Bera District and Land Office ('the land office'), in its capacity as the local planning authority, approved the layout plan for the development project which showed where the 682 buildings and the public utility lots were located. One of the public utility lots was a 39,514 sqft *tapak gerai*. Although the State ExCo had directed that no titles would be issued for the public utility lots, the land office did issue titles for them. PTSB subsequently sold the entire project land to GK Land Sdn Bhd ('GK Land') which entered into a joint-venture agreement ('JVA') with Mega 3 Housing Sdn Bhd ('Mega 3 Housing') to carry out the mixed residential/commercial development. At the request of the Bera District Water Department, Mega 3 Housing, with the land office's approval, built a reserved water tank ('the water tank') on part of the *tapak gerai* and then applied for and obtained the land office's approval to amend the approved layout plan to show where the water tank was situated. GK Land took issue over the construction of the water tank claiming that under the JVA, it was the beneficial owner of the *tapak gerai* lot which was excluded from the development area. GK Land sued Mega 3 Housing in the High Court for RM1,382,990 in special damages over 'the loss' of the *tapak gerai* and for general damages for loss of the economic use of the said lot. GK Land claimed that Mega 3 Housing breached the JVA by building the water tank on the *tapak gerai* when it was not provided for in the approved layout plan and also in applying to amend the approved layout plan to incorporate the construction of the water tank without GK Land's prior consent. Mega 3 Housing countered by saying that the *tapak gerai* did not belong to GK Land (even if the JVA purportedly said otherwise) but was earmarked for a public utility facility and was supposed to be surrendered to the Pahang Government as state land; that, accordingly, GK Land's claim against it had no legal or contractual basis; and that in building the water tank, Mega 3 Housing had merely carried out its contractual obligations under the JVA. The Pahang Government intervened into the suit, added itself as a co-defendant and counterclaimed against GK Land for a declaration that the *tapak gerai* was state land whose title had to be surrendered to the land office for cancellation. Mega 3 Housing later filed a separate suit against, among others, GK Land, seeking the same relief that was sought by the Pahang Government in its counterclaim against GK Land. GK Land contended that Mega 3 Housing's suit was unmaintainable because it had no locus standi to ask for the relief sought as only the Pahang Government had the authority to ask for that relief. Following a joint trial of the two suits, the High Court ruled that Mega 3 Housing was liable to GK Land for breaching the JVA in constructing the water tank contrary to the approved layout plan and without obtaining GK Land's prior consent but because the water tank was built to benefit the residents in the development project, Mega 3 Housing was only required to pay

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- A nominal damages as assessed by the court. The trial court held that GK Land's claim to beneficial ownership of the *tapak gerai* was a non-issue as its claim against Mega 3 Housing was essentially for damages for breach of the JVA in building the water tank. The court allowed the Pahang Government's counterclaim, declared that the *tapak gerai* was State land and ordered
- B PTSB/GK Land to surrender the title to the said lot to the land office for cancellation. Since Mega 3 Housing had no proprietary/beneficial interest in the *tapak gerai*, its suit was dismissed on the ground it had no locus standi to maintain the action. In the instant appeals against the High Court's decision, GK Land argued, inter alia, that: (a) the document of title for the *tapak gerai*
- C registered in PTSB's name did not contain any condition that the said lot was to be surrendered to the state government as State land; (b) the land office's acceptance of PTSB's payment of quit rent for the *tapak gerai* was acknowledgment that PTSB owned the lot; and (c) the Pahang Government's action to compel PTSB to surrender to it the *tapak gerai* was contrary to s 200
- D of the National Land Code and art 13(1) of the Federal Constitution.

Held, dismissing GK Land's appeal (and affirming the High Court's decision in that appeal), allowing Mega 3 Housing's cross-appeal to set aside the decision to award damages to GK Land and allowing Mega 3 Housing's appeal

E against the dismissal of its suit on the ground of locus standi:

- (1) The state authority, in approving the application (for subdivision) under s 124A of the National Land Code ('the NLC') had the authority or power to specify that certain areas within the proposed development had to be surrendered to the State as public utility areas. The *tapak gerai* was
- F specified as a public utility land in accordance with the terms of the State ExCo's two decisions dated 30 May 1990. There was no reason to disturb the conclusion reached by the trial judge with regard to the status of the *tapak gerai*. Having regard to the process or mechanism for the
- G designation of any public utility within any proposed development as provided in the Town and Country Planning Act 1976 and ss 124A and 136 of the NLC, it was clear that the submissions made by GK Land on this issue were misconceived and did not hold water (see paras 44–45, 50 & 74–75).
- H (2) There was no merit to GK Land's contention that PTSB had an indefeasible proprietorship over the *tapak gerai* by virtue of the title to that lot being issued in PTSB's name without any condition for its surrender. Pursuant to the State ExCo's two approvals made pursuant to s 124A of the NLC, only 682 units for houses and shop houses were
- I approved for development by PTSB. PTSB was fully aware that upon subdivision of the master land, it was only entitled to the 682 subdivisional lots and that all other public utility lands designated on the approved layout plan had to be surrendered to the state government as state land to be used for such purpose. It was a mistake by the Jabatan

- Daerah dan Tanah Bera to have issued titles for the ten public utility lands contrary to the direction of the State ExCo in its approvals for the development. PTSB was fully aware of the mistake made by the land office but chose to keep quiet about it. PTSB should not be allowed to profit from it (see paras 84–86). A
- (3) There was no merit in PTSB's contention that the acceptance of payment of quit rent for the *tapak gerai* by the land office amounted to a waiver and operated as an estoppel against the state government from claiming the *tapak gerai*. Judicial notice could be taken that acceptance of quit rent at the payment counter of the land office was automatic and the counter clerk who accepted the payment was not required to inquire into the validity or otherwise of the title before accepting payment. The counter clerk's administrative act in collecting revenue for the state, where the title as shown in the computerised system was for all intents and purposes still in existence and valid on the face of it, could not bind the state (see paras 88–89). B C D
- (4) GK Land's contention that the Pahang Government's act of seeking the return of the *tapak gerai* was ultra vires s 200 of the NLC and art 13(1) of the Federal Constitution was devoid of merit. The final approved layout plan in respect of the development had designated ten areas for use as public amenities/public places, including the *tapak gerai*. PTSB accepted all the terms of the State ExCo's approvals on the development including the approved layout plan and was fully aware that based on the terms of the two State ExCo approvals, public utility lands designated in the approved layout plan had to be surrendered to the state for such purposes in accordance with the procedure set out in the NLC for surrender of land. This was evidenced by PTSB's conduct in surrendering two lots earmarked for LLN substations directly to TNB and the other seven lots to the Jabatan Daerah dan Tanah Bera. PTSB could not be allowed to blow hot and cold or approbate and reprobate on this matter. The procedure adopted by the Pahang Government in seeking the declaration and order for PTSB/GK Land to surrender the document of title was a valid action and the High Court had the jurisdiction to grant the order to compel obedience to a decision of the state government made in accordance with the lawful exercise of its powers under the relevant laws (see paras 90–94). E F G H
- (5) In view of cl 8 of the JVA, Mega 3 Housing could not be said to have breached the JVA as the construction of the reserved water tank was clearly done at the direction of the Jabatan Bekalan Air which Mega 3 Housing as the developer was legally and contractually obliged to comply with. Based on the pleadings, GK Land's claim in its suit stood or fell depending on whether it was in fact and in law the beneficial owner of the *tapak gerai*. The *tapak gerai* was in fact and in law a public utility land I

- A which had to be surrendered to the State for such purpose. The evidence showed that when GK Land bought the master land from PTSB, all approvals for the development had already been finalised which meant GK Land bought the master land subject to the terms of the approvals and was bound by them. Hence, preamble (5) of the JVA which declared
- B GK Land as the beneficial owner of the *tapak gerai* and cl 2(d) which allegedly conferred exclusive right to GK Land to commercially develop the *tapak gerai* were ineffectual to confer such a right on GK Land. Since GK Land had no proprietary, legal or beneficial interest in the *tapak gerai*,
- C it could not claim to have suffered any loss/damage by reason of the amendment to the approved layout plan and/or the construction of the reserved water tank on the said lot (see 102–107).
- (6) The issue in Mega 3 Housing’s suit was not whether it had locus standi to initiate the suit but whether it had a cause of action against the defendants there. Mega 3 Housing was not pursuing a public interest litigation or public law remedy; nor was it seeking to vindicate or protect the interests of the state government. It was fighting its own cause in the light of GK Land’s claim against it in a suit where the actual legal status of the *tapak gerai* had a direct bearing on its liability to GK Land. Mega 3
- D Housing thus had a real and genuine interest in having the status of the *tapak gerai* determined by the court and, consequently, it had a cause of action against the defendants in its suit. Mega 3 Housing was not a busybody but had a legitimate interest in the relief it applied for (see paras 114–117).
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[Bahasa Malaysia summary]

- Pemilik (‘PTSB’) dua tanah pertanian (‘tanah itu’) memohon kelulusan Kerajaan Negeri Pahang (‘Kerajaan Pahang’) untuk membina rumah dan bangunan komersial di atas tanah itu. EXCO Kerajaan Pahang (‘EXCO Kerajaan’)
- G meluluskan permohonan PTSB untuk menukar kategori kegunaan tanah dan untuk memecah sempadan tanah itu dengan syarat, antaranya, sejumlah 682 bangunan keseluruhannya (634 rumah dan 48 rumah kedai) akan dibina dan lot yang dipecah sempadan yang diperuntukkan untuk utiliti awam (‘lot utiliti awam’) tidak akan diberi hakmilik tetapi hendaklah
- H diserahkan kepada Kerajaan Pahang. Pejabat Tanah dan Daerah Bera (‘Pejabat Tanah’), dalam kapasitinya sebagai pihak berkuasa perancangan tempatan, meluluskan pelan susun atur bagi projek pembangunan itu yang menunjukkan di mana 682 bangunan dan utiliti awam itu terletak. Salah satu lot utiliti awam itu merupakan sebuah tapak gerai seluas 39,514 kaki persegi. Walaupun
- I EXCO Kerajaan telah mengarahkan supaya tiada hakmilik dikeluarkan bagi lot utiliti awam itu, Pejabat Tanah telah mengeluarkan hakmilik bagi lot itu. PTSB selanjutnya telah menjual keseluruhan projek itu kepada GK Land Sdn Bhd (‘GK Land’) yang telah menandatangani suatu perjanjian usaha sama (‘perjanjian’) dengan Mega 3 Housing Sdn Bhd (‘Mega 3 Housing’) untuk

melaksanakan pembangunan bercampur perumahan/komersial itu. Berdasarkan kepada permohonan Jabatan Air Daerah Bera, Mega 3 Housing, dengan kelulusan Pejabat Tanah, telah membina sebuah tangki air simpanan ('tangki air') di atas sebahagian daripada tapak gerai dan kemudiannya telah memohon dan mendapatkan kelulusan Pejabat Tanah untuk meminda pelan susun atur yang diluluskan untuk menunjukkan di mana tangki air diletakkan. GK Land kemudiannya membuat tuntutan ke atas pembinaan tangki air itu dengan menyatakan bahawa menurut perjanjian, GK Land merupakan pemunya benefisial bagi lot tapak gerai yang telah dipinggirkan daripada kawasan pembangunan itu. GK Land telah menyaman Mega 3 Housing di Mahkamah Tinggi untuk RM1,382,990 sebagai ganti rugi khas atas 'kerugian' tapak gerai dan ganti rugi am bagi kerugian kegunaan ekonomi bagi lot tersebut. GK Land menyatakan bahawa Mega 3 Housing telah melanggar perjanjian dengan membina tangki air di atas tapak gerai sedangkan ia tidak diperuntukkan dalam pelan susun atur yang diluluskan dan juga melanggar perjanjian dengan memohon untuk meminda pelan susun atur yang diluluskan untuk memasukkan pembinaan tangki air tanpa mendapatkan persetujuan GK Land terlebih dahulu. Mega 3 Housing berhujah balas dengan menyatakan bahawa tapak gerai itu bukanlah milik GK Land (walaupun perjanjian itu menyatakan sebaliknya) tetapi ditandakan untuk sebuah kemudahan utiliti awam dan dikatakan sepatutnya diserahkan kepada Kerajaan Pahang sebagai tanah kerajaan; oleh itu, tuntutan GK Land terhadapnya tidak mempunyai asas undang-undang ataupun kontrak; dan dengan membina tangki air itu, Mega 3 Housing hanyalah menjalankan tugas kontraktualnya di bawah perjanjian. Kerajaan Pahang mencelah dalam saman itu, memasukkan dirinya sebagai salah seorang defendan dan membuat tuntutan balas terhadap GK Land bagi suatu perisytiharan bahawa tapak gerai itu merupakan tanah Kerajaan yang hakmiliknya hendaklah diserahkan kepada Pejabat Tanah untuk dibatalkan. Mega 3 Housing kemudiannya memfailkan saman yang berasingan terhadap, antaranya, GK Land, menuntut relief yang dituntut oleh Kerajaan Pahang dalam tuntutan balasnya terhadap GK Land. GK Land menyatakan bahawa saman Mega 3 Housing itu tidak boleh dipertahankan kerana Mega 3 Housing tidak mempunyai locus standi untuk menuntut relief yang dituntut itu kerana hanya Kerajaan Pahang sahaja yang mempunyai kuasa untuk menuntut relief itu. Lanjutan daripada perbicaraan bersama kedua-dua saman itu, Mahkamah Tinggi memutuskan bahawa Mega 3 Housing bertanggungjawab kepada GK Land kerana melanggar perjanjian dengan membina tangki air itu yang bertentangan dengan pelan susun atur yang diluluskan dan tidak mendapatkan persetujuan GK Land terlebih dahulu tetapi oleh sebab tangki air itu dibina untuk faedah kepada penghuni dalam projek pembangunan itu, Mega 3 Housing hanya dikehendaki untuk membayar ganti rugi nominal sebagaimana yang dinilai oleh mahkamah. Mahkamah bicara memutuskan bahawa tuntutan oleh GK Land sebagai pemilik benefisial tapak gerai itu bukan suatu isu memandangkan tuntutan GK Land terhadap Mega 3 Housing pada dasarnya hanya untuk

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- A mendapatkan ganti rugi atas pelanggaran perjanjian itu dengan membina tangki air. Mahkamah membenarkan tuntutan balas Kerajaan Pahang, mengisytiharkan bahawa tapak gerai itu merupakan tanah Kerajaan dan memerintahkan PTSB/GK Land untuk menyerahkan surat hakmilik lot tersebut kepada Pejabat Tanah untuk tujuan pembatalan. Memandangkan
- B Mega 3 Housing tidak mempunyai kepentingan tuan punya/benefisial ke atas tapak gerai, saman oleh Mega 3 Housing itu telah ditolak atas alasan bahawa Mega 3 Housing tidak mempunyai locus standi untuk mempertahankan tindakannya. Dalam rayuan terhadap keputusan Mahkamah Tinggi ini, GK Land menghujahkan, antaranya, bahawa: (a) dokumen hakmilik bagi tapak
- C gerai yang didaftarkan dengan nama PTSB tidak mengandungi apa-apa syarat yang menyatakan bahawa lot tersebut hendaklah diserahkan kepada kerajaan negeri sebagai tanah kerajaan; (b) tindakan pejabat tanah menerima pembayaran cukai tanah bagi tapak gerai daripada PTSB merupakan suatu pengiktirafan bahawa PTSB memiliki lot tersebut; dan (c) tindakan Kerajaan
- D Pahang untuk memaksa PTSB untuk menyerahkan kepadanya tapak gerai itu merupakan suatu tindakan yang bertentangan dengan s 200 Kanun Tanah Negara dan perkara 13(1) Perlembagaan Persekutuan.

E **Diputuskan**, menolak rayuan GK Land (dan mengesahkan keputusan Mahkamah Tinggi dalam rayuan itu), membenarkan rayuan balas Mega 3 Housing untuk mengeneipkan keputusan untuk memberikan ganti rugi kepada GK Land dan membenarkan rayuan Mega 3 Housing terhadap keputusan membatalkan samannya atas alasan locus standi:

- F (1) Pihak Berkuasa Negeri, dalam meluluskan permohonan (untuk pecah sempadan) di bawah s 124A Kanun Tanah Negara ('KTN') mempunyai kuasa untuk mengkhususkan sesetengah kawasan dalam pembangunan yang dicadangkan itu hendaklah diserahkan kepada kerajaan Negeri sebagai kawasan utiliti awam. Tapak gerai telah dikhususkan sebagai
- G sebuah tanah utiliti awam mengikut terma yang ditetapkan oleh dua keputusan EXCO Kerajaan bertarikh 30 Mei 1990. Tidak ada sebab untuk mengganggu kesimpulan yang dicapai oleh hakim bicara berkenaan dengan status tapak gerai. Dengan mengambil kira kepada proses atau mekanisme bagi penetapan mana-mana utiliti awam dalam
- H mana-mana pembangunan yang dicadangkan sebagaimana yang diperuntukkan dalam Akta Perancangan Bandar dan Desa 1976 dan ss 124A dan 136 KTN, adalah jelas bahawa penghujahan oleh GK Land dalam isu ini adalah tersalah tanggap dan tidak dapat dipertahankan (lihat perenggan 44–45, 50 & 74–75).
- I (2) Hujahan pihak GK Land bahawa PTSB mempunyai ketuanpunyaan yang tidak boleh disangkal ke atas tapak gerai oleh sebab surat hakmilik lot tersebut dikeluarkan atas nama PTSB tanpa apa-apa syarat untuk penyerahannya tidak mempunyai merit. Menurut dua kelulusan oleh EXCO Kerajaan yang dibuat menurut s 124A KTN, hanya 682 unit

- rumah dan rumah kedai yang diluluskan untuk pembangunan oleh PTSB. PTSB mengetahui bahawa apabila pecah sempadan ke atas tanah dibuat, ia hanya berhak ke atas 682 lot yang dipecah sempadan dan semua tanah utiliti awam lain yang ditetapkan dalam pelan susun atur yang diluluskan itu hendaklah diserahkan kepada kerajaan negeri sebagai tanah Kerajaan untuk digunakan bagi maksud tersebut. Jabatan Daerah dan Tanah Bera telah melakukan kesilapan apabila mengeluarkan surat hakmilik bagi sepuluh tanah utiliti awam itu yang bertentangan dengan arahan daripada EXCO Kerajaan dalam kelulusan bagi pembangunan itu. PTSB mengetahui tentang kesilapan yang dibuat oleh pejabat tanah itu dan memilih untuk berdiam diri tentangnya. PTSB tidak harus dibenarkan untuk mendapatkan keuntungan daripada itu (lihat perenggan 84–86). A
- (3) Hujahan PTSB bahawa penerimaan pembayaran cukai tanah bagi tapak gerai oleh pejabat tanah terjumlah kepada suatu penepian dan beroperasi sebagai suatu estoppel terhadap kerajaan negeri daripada menuntut tapak gerai merupakan hujahan yang tidak bermerit. Pengiktirafan penghakiman boleh dibuat bahawa penerimaan cukai tanah di kaunter pembayaran pejabat tanah adalah automatik dan kerani kaunter yang menerima pembayaran tidak dikehendaki untuk bertanya tentang kesahan hakmilik atau sebaliknya sebelum menerima pembayaran. Tindakan pentadbiran oleh kerani kaunter dalam mengutip hasil bagi kerajaan, yang surat hakmilik yang ditunjukkan dalam sistem komputer menunjukkan yang ia masih wujud dan sah pada asasnya, tidak boleh mengikat kerajaan (lihat perenggan 88–89). B C D E F
- (4) Hujahan GK Land bahawa tindakan Kerajaan Pahang mendapatkan balik tapak gerai melampaui kuasa s 200 KTN dan perkara 13(1) Perlembagaan Persekutuan adalah tidak bermerit. Pelan susun atur yang diluluskan berkenaan dengan pembangunan itu telah menetapkan sepuluh kawasan untuk digunakan sebagai tempat awam, termasuk tapak gerai. PTSB menerima semua terma kelulusan EXCO Kerajaan tentang pembangunan itu termasuklah pelan susun atur yang diluluskan dan PTSB mengetahui bahawa berdasarkan kepada terma kelulusan EXCO Kerajaan, tanah utiliti awam yang ditetapkan dalam pelan susun atur yang diluluskan hendaklah diserahkan kepada kerajaan bagi maksud tersebut mengikut tatacara yang digariskan dalam KTN bagi penyerahan tanah. Ini dapat dilihat melalui tindakan PTSB menyerahkan dua lot yang ditandakan untuk substesen LLN kepada TNB dan tujuh lot yang lain kepada Jabatan Daerah dan Tanah Bera. PTSB tidak boleh dibenarkan untuk berdolak-dalik dalam perkara ini. Tatacara yang diambil oleh Kerajaan Pahang untuk mendapatkan pengisytiharan dan perintah untuk PTSB/GK Land menyerahkan dokumen hakmilik merupakan suatu tindakan yang sah dan Mahkamah Tinggi mempunyai bidang kuasa untuk memberi perintah untuk memaksa kepatuhan G H I

- A kepada suatu keputusan kerajaan negeri yang dibuat mengikut pelaksanaan kuasa yang sah di bawah undang-undang yang relevan (lihat perenggan 90–94).
- B (5) Merujuk kepada klausa 8 perjanjian, Mega 3 Housing tidak boleh dikatakan telah melanggar perjanjian kerana pembinaan tangki air simpanan itu secara jelasnya dibuat atas arahan Jabatan Bekalan Air yang Mega 3 Housing sebagai pemaju dikehendaki secara perundangan dan kontrak untuk mengikutinya. Berdasarkan pliding, tuntutan GK Land dalam samannya adalah bergantung kepada sama ada ia adalah, secara fakta dan undang-undang, merupakan pemilik benefisial tapak gerai.
- C tapak gerai adalah secara fakta dan undang-undang merupakan sebuah tanah utiliti awam yang mesti diserahkan kepada kerajaan bagi maksud itu. Keterangan menunjukkan bahawa GK Land membeli tanah asal daripada PTSB, kesemua kelulusan bagi pembangunan itu telahpun diputuskan yang bermakna bahawa GK Land membeli tanah asal itu
- D tertakluk kepada terma kelulusan dan terikat dengannya. Maka, mukadimah (5) perjanjian yang mengisytiharkan bahawa GK Land sebagai pemilik benefisial bagi tapak gerai dan klausa 2(d) yang dikatakan memberi hak eksklusif kepada GK Land untuk membangunkan tapak
- E gerai secara komersial gagal untuk memberikan hak tersebut kepada GK Land. Memandangkan GK Land tidak mempunyai proprietari, perundangan atau kepentingan benefisial dalam tapak gerai, ia tidak boleh menyatakan bahawa ia telah menanggung apa-apa kehilangan/kerugian disebabkan oleh pindaan kepada pelan susun atur
- F yang diluluskan dan/atau pembinaan tangki air simpanan atas lot tersebut (lihat perenggan 102–107).
- G (6) Isu dalam saman Mega 3 Housing bukanlah sama ada ia mempunyai locus standi untuk memulakan saman tetapi sama ada ia mempunyai kausa tindakan terhadap defendan. Mega 3 Housing bukanlah hendak membuat suatu litigasi kepentingan awam atau remedi undang-undang awam; atau ia bukanlah hendak menjaga atau menyangkal kepentingan kerajaan negeri. Ia hanya menjaga kepentingannya atas sebab tuntutan GK Land terhadapnya dalam suatu saman yang status perundangan
- H sebenar tapak gerai mempunyai kesan liabiliti secara langsung kepada GK Land. Mega 3 Housing mempunyai kepentingan yang benar dan tulen dalam menghendaki status tapak gerai ditentukan oleh mahkamah dan, akibatnya, ia mempunyai kausa tindakan terhadap defendan dalam samannya. Mega 3 Housing bukanlah suatu syarikat yang mencampuri urusan orang lain tetapi mempunyai kepentingan yang sah berhubung
- I dengan relief yang dimohonnya (lihat perenggan 114–117).]

Notes

For cases on imposition of condition, see 2(4) *Mallal's Digest* (5th Ed, 2015) paras 5716–5718.

For cases on what constituted locus standi, see 8(3) *Mallal's Digest* (5th Ed, 2015) paras 6576–6578. A

Cases referred to

Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12, SC (refd) B
Hoe Lee Development Sdn Bhd v Shell Malaysia Trading Sdn Bhd [1985] 1 MLJ 267; [1984] 1 LNS 115 (folld)
Lee Chi Min & Anor v Superintendent of Land and Survey Department, Kuching [1981] 1 MLJ 93; [1980] 1 LNS 196, FC (folld)
Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Limpah Enterprise Sdn Bhd [1979] 1 MLJ 135, FC (refd) C

Legislation referred to

Federal Constitution art 13(1)
 National Land Code ss 124(1), (5), (5)(c), 124A, 124A(3), 136, 136(1), (1)(c)(i), (1)(c)(ii), (1)(ca), 200 D
 Town and Country Planning Act 1976 s 2, 4, 4(1), (4), (5), 6, 19, 21, 21(1), 21A, 21A(1), 21B, 21B(1), 22

Appeal from: Civil Suit Nos 22NCVC-18–03 of 2013, S-269 of 2010 and 22–25 of 2010 (High Court, Temerloh) E

Rajvinder Singh (S Raven with him) (Dennis Nik & Wong) for the appellant.
Francis Tan (Gow Jia Jian with him) (Rosni, Francis Tan & Ho) for the first respondent. F
Ahmad Hanir bin Hambaly (Legal Advisor, State Legal Advisor's Office) for the second respondent.

Lim Yee Lan JCA:

INTRODUCTION G

[1] There were two appeals before us, namely, Appeal No C-01(NCVC)(W)-184-06 of 2014 ('Appeal No 184') and Appeal No C-01–185–06 of 2014 ('Appeal No 185') emanating from a single judgment of the Temerloh High Court given on 29 April 2014 given in relation to two suits which were heard together by the High Court. H

[2] Appeal No 184 relates to Suit No S-22–269 of 2010 which was originally filed in the Kuala Lumpur High Court by GK Land Sdn Bhd ('GK Land') against Mega 3 Housing Sdn Bhd ('Mega 3 Housing') ('the Kuala Lumpur Suit'). I

A [3] Appeal No 185 relates to Suit No 22–25 of 2010 which was filed in the Temerloh High Court by Mega 3 Housing against, inter alia, GK Land (‘the Temerloh Suit’).

B [4] The Kuala Lumpur Suit was subsequently transferred, on the application of Mega 3 Housing, to the Temerloh High Court to be heard together with the Temerloh Suit.

BACKGROUND FACTS

C [5] The background facts giving rise to the two suits were as follows.

D [6] Pembangunan Triang Sdn Bhd (‘PTSB’) was the registered proprietor of two pieces of agricultural land held under CT 4982 Lot 3257 and CT 4983 Lot 3258 both in Mukim Triang, Daerah Bera, Pahang Darul Makmur (‘the master land’).

E [7] In 1990, PTSB applied to the Pahang State Government for approval to develop the master land into a mixed residential/commercial development (‘the development’).

F [8] The application was made pursuant to s 124A, which provides a procedure to a registered proprietor who wishes to develop his land for a commercial purpose to make a simultaneous application to subdivide his land and to vary the category or condition of land use, under s 124(1) of the National Land Code (‘the NLC’).

G [9] The application was approved by the Pahang State Executive Council (‘State ExCo’) at its meeting held on 30 May 1990.

H [10] Subsequently, upon PTSB’s appeal, the State ExCo at its meeting on 13 April 1994 increased the number of residential/shophouse properties to be constructed within the development.

[11] The final approval of the State ExCo was as follows:

- I (a) category of land use was changed from agriculture to building (residential/commercial);
- (b) the development shall consist of 682 units of buildings comprising 48 units of shop houses and 634 units of medium and low cost houses;

(c) no subdivisional titles would be issued for areas designated for amenity/utility or public purpose (public utility lands) within the development and these areas must be surrendered to the state government; and **A**

(d) the approval was subject to the conditions specified in Annexures II and III to the State ExCo paper dated 30 May 1990. **B**

[12] The layout plan ('approved layout plan') for the development was subsequently approved by the Pejabat Daerah dan Tanah Bera (in its capacity as the local planning authority for the district of Bera) on 28 July 1997. **C**

[13] Besides showing the position of the 682 buildings lots, the approved layout plan also delineated the following ten areas as public utility lands within the development: **D**

(a) one lot for *tapak gerai*;

(b) one lot for *tangki najis*;

(c) one lot for *surau*;

(d) three lots for *kawasan lapang*; **E**

(e) two lots for LLN substations;

(f) one lot for *dewan orang ramai*; and

(g) one lot for *tadika*. **F**

[14] Despite the State ExCo's direction that no subdivisional title would be issued for any public utility land within the development, the Pejabat Daerah dan Tanah Bera nevertheless proceeded to prepare a total of 692 subdivisional titles, namely, 682 for the residential and shophouse lots and ten for the public utility lands. **G**

[15] Nevertheless, in its letter dated 9 September 1997 to PTSB, the Pejabat Daerah dan Tanah Bera had requested a sum of RM61,400 as processing fee only for the preparation and issuance of documents of titles for the 682 commercial/residential properties. **H**

[16] PTSB duly paid the processing fee on 11 July 2002 and an official receipt was issued by the Pejabat Daerah dan Tanah Bera to PTSB. **I**

[17] PTSB subsequently sold the said Land to GK Land vide a sale and purchase agreement ('the SPA') dated 22 November 1999.

- A [18] Vide a joint venture agreement dated 15 January 2001, GK Land appointed Eastern Global United Sdn Bhd ('EGUSB') as developer for the development.
- B [19] Vide a letter dated 16 January 2006 addressed to EGUSB the Jabatan Bekalan Air Daerah Bera requested that a 'tangi air reserve' ('the reserved water tank') be constructed within the development area.
- [20] Neither PTSB nor EGUSB responded to the said letter.
- C [21] EGUSB did not complete the development and by mutual consent the joint venture agreement was terminated.
- D [22] Vide a new joint venture agreement dated 14 April 2008 ('the JVA') GK Land appointed Mega 3 Housing as the new developer to complete the development. The development was then carried out to its completion by Mega 3 Housing.
- E [23] Pursuant to the requirement of the Jabatan Bekalan Air, and with the approval of the Pejabat Daerah dan Tanah Bera, Mega 3 Housing proceeded to construct the reserved water tank on a portion of the *tapak gerai* lot.
- F [24] After construction of the Water Tank, Mega 3 Housing proceeded to apply to the Pejabat Daerah dan Tanah Bera to amend the approved layout plan to reflect the position of the said reserved water tank on the said plan and it was approved on 25 February 2009.
- G [25] The construction of the Water Tank on the Tapak Gerai became the subject of a dispute between GK Land and Mega 3 Housing and subsequently the subject matter of the two suits before the Kuala Lumpur High Court and the Temerloh High Court.
- AT THE HIGH COURT
- H [26] The Kuala Lumpur Suit was filed by GK Land against Mega 3 Housing for breach of the terms of the JVA.
- I [27] In its statement of claim, GK Land claims that by virtue of recital (5) read with the definition of 'The said Land' in cl 2(d) of the JVA, GK Land was the beneficial owner of the Tapak Gerai and the said land was excluded from the development and would be separately developed by GK Land on its own.

[28] GK Land alleged that Mega 3 Housing had breached cl 2(d) of the JVA when it proceeded to construct the reserved water tank on the Tapak Gerai contrary to the approved layout plan which did not envisage the construction of a water tank on the said Tapak Gerai and also cl 2(g) of the JVA which provides that no amendment to the approved layout plan could be made without the consent of GK Land and the local authority.

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[29] GK Land further averred that the construction of the water tank on the *tapak gerai* had seriously affected its commercial viability and GK Land suffered loss and damage as a result thereof.

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[30] In the premises, GK Land claimed for special damages in the sum of RM1,382,990 representing the loss of the whole *tapak gerai* (calculated at 39,514 sqft x RM 35 per sqft) and general damages for loss of economic use of the *tapak gerai* to be assessed.

D

[31] In opposing the Kuala Lumpur Suit, Mega 3 Housing raised a number of defences in its defence, among which were, that the *tapak gerai* did not belong to GK Land but was land specified in the approved layout plan for the development as a public utility land and was supposed to be surrendered to the Pahang State Government as state land; that recital (5) of the JVA which purports to confer beneficial ownership of the *tapak gerai* to GK Land was ineffectual and unenforceable since the land in fact belongs to the state government; that GK Land had no right whether legal or contractual to claim for any loss or damages which it purportedly suffered due to the construction of the reserved water tank on the *tapak gerai* which was a public utility land; that Mega 3 Housing was merely complying with its contractual obligation under cl 8 of the JVA which requires the Mega 3 Housing as the developer to conform with, inter alia, the requirements of any local or other authority in respect of the development; that Mega 3 Housing did not breach 2(g) of the JVA when it applied to amend the approved layout plan as such action was necessary to reflect the true position of the reserved water tank in compliance with the law relating to layout plan and the amendment to the approved layout plan was approved by the Pejabat Daerah dan Tanah Bera (acting in its capacity as the local authority for the district of Bera) on 25 February 2009.

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[32] The Pahang State Government subsequently applied to intervene in the Kuala Lumpur Suit and was added as the second defendant. In its defence and counterclaim, the state government, after narrating the history behind the development, disputed GK Land's assertion that the *tapak gerai* was land beneficially owned by GK Land. It was averred that the *tapak gerai* was in fact a public utility land and should have been surrendered to the Pahang State Government as part of the conditions of its approval for the development. The state government then sought an order from the court to declare the *tapak gerai*

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- A as state land and a consequential order for PTSB or GK Land to surrender the issue document of title of the *tapak gerai* to the relevant land office for cancellation.
- B [33] Mega 3 Housing subsequently filed the Temerloh Suit naming PTSB as the first defendant, GK Land as the second defendant, the Pahang State Government as the third defendant, Pengarah Tanah dan Galian Negeri Pahang as the fourth defendant and the Pentadbir Tanah Daerah Bera as the fifth defendant.
- C [34] In its statement of claim, Mega 3 Housing seeks a similar relief from the court to declare the *tapak gerai* as state land and an order for PTSB/GKL to surrender the issue document title of the *tapak gerai* to the Pejabat Tanah Daerah Bera for cancellation.
- D [35] In its defence to the suit, GK Land disputed Mega 3 Housing's locus standi to seek the declaration and asserts that only the state government has the locus standi to do so.
- E DECISION OF THE HIGH COURT
- F [36] At the conclusion of the trial, after hearing the parties and having considering their submissions, the learned judicial commissioner allowed GK Land's claim against Mega 3 Housing for breach of the JVA and granted nominal damages to GK Land to be assessed by the court. He also allowed the state government's prayers for a declaration that the *tapak gerai* was state land and an order for PTSB/GKL to surrender the issue document of title of the said land for cancellation. The learned judicial commissioner however dismissed the Temerloh Suit on the issue of *locus standi*.
- G [37] Briefly, the decision of the High Court was premised on the following findings.
- H [38] In the Kuala Lumpur Suit, GK Land's claim against Mega 3 Housing was for breach of the JVA. Consequently, whether GK Land has any proprietary right over the *tapak gerai* lot is irrelevant in deciding whether Mega 3 Housing had breached the terms of the JVA:
- I [1] It is clear that Mega 3 Housing had breached clause 2(g) of the JVA when it constructed the Reserved Water Tank on the Tapak Gerai lot without the prior consent of GKL and in contravention of the Approved Layout Plan which did not include the construction of the Water Tank on the said Tapak Gerai lot. GKL was therefore entitled to damages against Mega 3 Housing as provided in section 74 of the Contracts Act;

- [2] Nevertheless, since the Water Tank was for the benefit of the purchasers in the development and constructed on land which was meant for a public purpose and had to be surrendered to the State Government, GKL was therefore entitled to nominal damages only to be assessed by the Court (see: *Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360); A
- [3] In respect of the State Government's counterclaim against GK Land in the Kuala Lumpur Suit, it is clear from the oral and documentary evidence adduced by the parties before the Court that the Tapak Gerai lot was a public utility land and by virtue of the conditions of approval by the State Government that all areas in the development meant for a public utility purpose must be surrendered to the State Government as State land, the State Government was entitled to the declaration and order sought; B
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- [4] In respect of the Temerloh Suit, since Mega 3 Housing has no proprietary or beneficial interest in the Tapak Gerai lot, it has no *locus standi* to come to Court to seek the remedy in the form of a declaration on the status of the Tapak Gerai in the Suit. (See *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12); D
- [5] The rightful party to seek such a declaration was the State Government of Pahang which had already done so in the Kuala Lumpur Suit. The Court has no power to grant two declarations of the same nature to two different parties in two different suits. E
- [39] In consequence of his decision, the learned trial judge made the following orders:
- Tuntutan Plaintiff dalam Kes Temerloh terhadap Defendan (1) dan Defendan (2) seterusnya Defendan 3 hingga Defendan (5) di tolak dengan kos diaward kepada Defendant (1) dan (2) sebanyak RM57,000.00 serta tiada kos diaward kepada Defendan (3) hingga defendan (5). F
- Tuntutan balas Kerajaan Pahang dalam Kes Kuala Lumpur bagi satu deklarasi adalah dibenarkan dan diperintahkan bahawa:
- (i) Tanah 'Tapak Gerai' yang dipegang dibawah Suratan Hakmilik HS(D) 7290, PT 18785, Mukim Triang, Daerah Bera, Pahang diistiharkan sebagai milik Kerajaan Negeri Pahang; G
- (ii) GK Land Sdn. Bhd., diperintahkan supaya menyerahhak Suratan Hakmilik asal tanah 'Tapak Gerai' tersebut dalam tempoh 14 hari untuk dibatalkan oleh Pentadbir Tanah Bera. H
- (iii) Kerajaan Negeri Pahang hendaklah membayar balik segala cukai tanah yang telah dibayar kepada Pembangunan Triang Sdn. Bhd., setelah hakmilik asal Suratan Hakmilik tanah 'Tapak Gerai' diserahkan kepada Pentadbir Tanah Bera. I
- (iv) Diperintahkan selanjutnya bahawa GK Land Sdn Bhd berhak atas 'nominal damages' dari Mega 3 Housing Sdn Bhd, yang akan ditentukan dihadapan Hakim kemudian.

A THE APPEALS

[40] As stated earlier, both GK Land and Mega 3 Housing appealed against the decision of the Temerloh High Court.

B OUR DECISION

[41] We heard the two appeals together on 26 January 2015 and after considering the oral and written submissions of learned counsel for all the parties and having perused the appeal records, we had dismissed the entire appeal of GK Land in Appeal No 184. We had however allowed Mega 3 Housing's cross-appeal in Appeal No 184 and its appeal in Appeal No 185.

[42] GK Land has now applied to the Federal Court for leave to appeal against our decision. We now set out the reasons for our decision.

D ISSUES FOR DETERMINATION

[43] Before us learned counsel for the parties raised the following three issues for our determination:

- E (a) was the learned judicial commissioner correct in holding that pursuant to the approvals of the State ExCo for the development of the master land the *tapak gerai* was a public utility land which had to be surrendered to the state as state land?
- F (b) was the learned trial judge correct in holding that GK Land's claim in the Kuala Lumpur Suit was a contractual claim based on the JVA and the question whether GK Land had proprietary right over the *tapak gerai* was irrelevant in determining Mega 3 Housing's liability under the JVA?
- G and (c) was the learned judicial commissioner correct in holding that Mega 3 Housing did not have the locus standi to seek the declaration regarding the status of the *tapak gerai* in the Temerloh Suit?

H *The first issue: Was the learned judicial commissioner correct in holding that the pursuant to the approvals of the State ExCo for the development of the master land the tapak gerai was a public utility land which had to be surrendered to the state as state land?*

I [44] To our minds, this issue raises two important questions for our consideration. The first question was whether the state authority, in approving an application under s 124A of the NLC, has the authority or power to specify that certain areas within the proposed development must be surrendered to the state as public utility areas. This question is important because of the legal and

constitutional issue raised by GK Land that the orders of the High Court declaring the *tapak gerai* as state land and for its issue document of title to be surrendered to the state government was ultra vires the procedure in s 200 of the NLC relating to the surrender of land and art 13(1) of the Federal Constitution which prohibits the deprivation of private property by the government save in accordance with the law.

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[45] The second question is more a question of fact, ie was the *tapak gerai* indeed specified as a public utility land in accordance with the terms of the State ExCo's two decisions dated 30 May 1990 (via exh P12) and 13 April 1994 (via exh P16).

C

[46] In this regard, the learned judicial commissioner in his grounds of judgment, specifically at paras [23]–[36], had answered both the questions in the affirmative.

D

[47] In respect of the first question, the learned judicial commissioner had relied on s 124A(3) read with s 124(5)(c) of the NLC which reads as follows:

Section 124A

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(3) The approval of the application for sub-division and the approval of the application under sub-section (1) of section 124 in respect of the proposed sub-divisional portions shall both be conditional upon the applicant satisfying in respect of all the sub-divisional portions, within such period as the State Authority may specify, all the conditions that may be imposed under sub-section (5) of section 124 in respect of each of the proposed sub-divisional portions.

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Section 124(5)

(5) Any direction given by the State Authority under this section may be made conditional upon all or any of the following matters —

G

- (a) the payment of a further premium;
- (aa) the payment of any other charges as may be prescribed;
- (b) the reservation of a new rent;
- (c) *compliance with such other requirements as the State Authority may think fit.* (Emphasis added.)

H

[48] The learned judicial commissioner was of the view that s 124A(3) read with s 124(5)(c) was the empowering provision which gave the state authority, when approving the subdivision of any private land for development purposes, to impose conditions relating to the reservation of certain areas within the development to be used for certain public amenity/utility purposes and for such areas to be surrendered to the state for such purposes.

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- A [49] In regard to the second question, the learned judicial commissioner had relied in the main on, (1) the decision of the Jawatankuasa Pembangunan Tanah dan Kewangan Negeri Pahang dated 16 March 1990 (exh P11), which when approving in principle the proposed development, had cited ‘kawasan perniagaan kedai (*gerai*)’ as an example of a public utility land (*kemudahan awam*) which must be sited in the development; (2) the two decisions of the State ExCo vide exhs 12 and 16 which had mandated that all ‘tapak bangunan awam hendaklah diserahkan kepada Kerajaan dan tidak akan dikeluarkan hakmilik’ and the types of kemudahan awam were stated as ‘kawasan lapang, tangki najis dan surau dan lain-lain tapak awam’. The learned judicial commissioner was of the view that by virtue of the words ‘lain-lain tapak awam’ used in the said decisions, the list of ‘kemudahan awam’ or public utility land was not exhaustive. In this regard, the learned judicial commissioner had accepted the evidence SP3, Dato Nazri bin Abu Bakar, the then Deputy Director of State Land and Mines Department and SP1, Syed Ahmad Khairul Anwar al-Yahya bin Sheikh Abdul Rahman, the then Secretary to the State ExCo Meeting, who had explained to the court that the conditions imposed by the State ExCo can be general or specific in nature. According to them, if the conditions are general, it would mean that the State ExCo left it to the relevant State agencies/departments to make the specifications. In this case, the State ExCo had imposed a general condition regarding ‘lain-lain tapak awam’ which meant that it had left the task of specifying these lands to the Pejabat Daerah dan Tanah (acting in its capacity as the local authority for the District of Bera), after consulting the relevant state agencies or departments. In so doing, the local authority would be guided by the decision made by Jawatankuasa Pembangunan Tanah dan Kewangan Negeri Pahang referred to earlier. In this case, the Jawatankuasa Pembangunan Tanah dan Kewangan Negeri Pahang in its approval in principle dated 16 March 1990 in respect of this development (exh P11) had cited ‘kawasan perniagaan kedai (*gerai*)’ as an example of a public utility land to be sited within the development; and (3) the layout plan approved by the local authority had designated ten areas within the development as public utility lands, one of which was the *tapak gerai*.
- B
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- H [50] Having given due consideration to the grounds of judgment of the learned judicial commissioner, the submissions of the parties and having perused the appeal records, we find no reason to disturb the conclusion reached by the learned judicial commissioner with regard to the status of the *tapak gerai*, albeit based on slightly differently grounds from the grounds proffered by him.
- I [51] On this issue, having regard to the law relating to planning approval which must be obtained by a registered proprietor before undertaking any commercial development of his land, and it is common knowledge that the law relating to any planning approval is the Town and Country Planning Act 1976 (‘the Act’), it is our view that the process or mechanism by which the state

authority came to designate any land within any proposed development as a public utility land is to be found in the Act rather than under s 124A(3) read with s 124(5) of the NLC as opined by the learned judicial commissioner. A

[52] As stated earlier, the Town and Country Planning Act is an Act which regulates, inter alia, any planning permission for development of any private land, the authority by whom such permission is to be obtained and the conditions which can be imposed by the relevant approving authority in approving such development. B

[53] For the purpose of these appeals, the relevant sections in the Act governing the proposed development of the master land would be ss 4, 19, 21, 21A, 21B and 22. C

[54] Section 4 of the Act established a statutory body known as the State Planning Committee ('the committee') whose membership consists, inter alia, of the Menteri Besar as the Chairman, the State Secretary, the Director of Land and Mines, the State Director of Public Works and the State Director of Environment. As can be seen this is a high powered statutory body where the chairman is none other than the Menteri Besar of the state who, in the discharge of his functions, is assisted by the heads of the relevant state departments responsible for the administration of lands, public works and environment within the state. D E

[55] Under s 4(4) then in force, the functions of the committee include, to promote within the state, within the framework of the national policy, the conservation, use and development of all lands in the state. F

[56] Section 4(5) provides that the committee may from time to time give any local planning authority directions not inconsistent with the provisions of the Act, and the local planning authority shall give effect to such directions. G

[57] Section 19 in turn provides that no person shall undertake any development of any land or building unless he has applied for a planning permission under the Act. H

[58] Section 21(1) states that an application for planning permission in respect of a development shall be made to the local planning authority and shall be in such form and shall contain such particulars and be accompanied by such documents, *plans*, and fees as may be prescribed. I

[59] Section 2 defines a local planning authority as 'the local authority for the area in which the land or building is situated'. Thus, in respect of the

- A development in this case, the Pejabat Daerah dan Tanah Bera in its capacity as the local authority for the District of Bera was the local planning authority for the purpose of planning permission in respect of the development in the area.
- B [60] Under s 6, the functions of a local planning authority shall be, inter alia, (a) to regulate, control, and plan the development and use of all lands and buildings within its area.
- C [61] Section 21A(1) provides that in addition to the documents and *plans* required to be submitted under sub-s 21(1) for planning permission, the applicant shall submit a development proposal report which shall contain, inter alia, *layout plans*, the details of which are specified in s 21B.
- D [62] Section 21B(1) in turn provides that the layout plans shall show the proposed development and, in particular under para (vi), 'the making up of *open spaces*'. Section 2 of the Act defines an 'open space' to mean '*any land whether enclosed or not which is laid out or reserved for laying out wholly or partly as a public garden, park, sports and recreation ground, pleasure ground, walk or as a public place*'.
- E [63] Applying the provisions of the Act to the facts of this case, it could be surmised that the Jawatan Kuasa Pembangunan Tanah dan Kewangan, despite its name, was not a mere administrative body, but the State Planning Committee as envisaged in s 4(1) of the Act.
- F [64] As stated earlier, the State Jawatan Kuasa Pembangunan Tanah dan Kewangan in its capacity as the State Planning Committee in its decision dated dated 7 February 1990 in approving the development project in principle (exh P11) had given the following direction to the local planning authority:
- G Oleh sebab keluasan tanah ini melebihi 20 ekar disyaratkan supaya diadakan *kemudahan awam* seperti padang permainan, tapak dewan orang ramai, *kawasan perniagaan kecil (gerai)*, tapak surau dan lain-lain mengikut keperluan yang ditentukan oleh Pihak Berkuasa Tempatan dan masa ke semasa.
- H [65] It could also be safely surmised that this direction of the State Jawatan Kuasa Pembangunan Tanah dan Kewangan was given pursuant to s 4(4) of the Act in the exercise of its statutory function.
- I [66] It is clear that in the light of the functions of the State Planning Committee as provided in s 4(4) and the meaning given to the words 'open space' in s 2 of the Act, which includes 'land, whether enclosed or not ... reserved as a public place', the inclusion of 'kawasan perniagaan kecil (gerai)' as

an example of land to be used for a public purpose by the Jawatan Kuasa Pembangunan Tanah dan Kewangan sits in with the meaning of 'open space' in s 2.

A

[67] By virtue of s 4(5) of the Act, the Pejabat Daerah dan Tanah as the local planning authority responsible for the approval of this development would have been required to comply with the direction of the Jawatan Kuasa Pembangunan Tanah dan Kewangan.

B

[68] This would account for the fact that the Pejabat Daerah dan Tanah Bera (in its capacity as local planning authority) had pursuant to the direction of the Jawatan Kuasa Pembangunan Tanah dan Kewangan specified ten areas, one of which was the *tapak gerai*, within the development as lands to be used for a public amenity/utility or for a public purpose on the final approved layout plan.

C

D

[69] Further, it is clear from ss 21A and 21B of the Act that it was the registered proprietor who has to prepare all the plans, including the layout plan, for the purpose of obtaining planning approvals. In this case, the evidence showed that the proposed layout plan submitted by PTSB through its consulting engineers had already incorporated the ten specified public utility lands and the said layout plan was finally approved by the Pejabat Daerah dan Tanah Bera on 28 July 1997. SP1, Mr Ong Teong Pun, the sole witness for GKL during the trial, admitted during cross examination that PTSB had accepted the approved layout pan without any protest.

E

F

[70] Our conclusion that the process or mechanism of specifying any area within any proposed development as a public utility land is to be carried out under the various provisions of the Act enumerated above is further supported by s 136 read with s 124A of the NLC.

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[71] For ease of reference, we set out below s 124A and s 136 which read as follows:

Section 124A

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- (1) The proprietor of any alienated land may apply to the State Authority for the approval of the sub-division of the land and at the same time make an application under sub-section (1) of section 124 in respect of the proposed sub-divisional portions.
- (2) Any application under sub-section (1) of section 124 in respect of the proposed sub-divisional portions shall be in Form 7D, and shall be treated and dealt with under section 124 as a separate application under sub-section (1) of section 124 in respect of each of the proposed sub-divisional portions.

I

- A (3) The approval of the application for sub-division and the approval of the application under sub-section (1) of section 124 in respect of the proposed sub-divisional portions shall both be conditional upon the applicant satisfying in respect of all the sub-divisional portions, within such period as the State Authority may specify, all the conditions that may be imposed under sub-section (5) of section 124 in respect of each of the proposed sub-divisional portions.
- B
- C (4) *For the purpose of the application for sub-division under sub-section (1), the application shall be treated as it is an application under section 135 and the provisions of sections 136, 137, 138 and 139 shall apply insofar as they are not inconsistent with the provisions of this section, and in considering such application the State Authority shall have and may exercise all the powers of the State Director or the Land Administrator, as the case may be, or may direct the State Director or the Land Administrator, as the case may be, to exercise all or any of them.*
- D Section 136
(1) *No sub-division shall be approved by the State Director or, as the case may be, Land Administrator unless the following conditions are satisfied —*
...
- E (c) without prejudice to the generality of paragraph (b) —
(i) *that any necessary approval of any planning authority has been obtained, and*
(ii) *that the sub-division would not be contrary to any plan approved by the State Authority for the development of the area in which the land is situated, or to any decision of any planning authority for that area, and*
- F (iii)
if the case falls within any direction in that behalf given by the State Authority, that the sub-division has the consent of any body or authority specified in, or appointed by, the direction; (Emphasis added.)
- G

[72] It is clear to us that the term ‘planning authority’ mentioned in s 136(1)(c)(i) and (ii) must refer to the planning authority as defined in the Act. In other words, subdivision of the master land under the special procedure provided in s 124A of the NLC would only be considered after all the necessary planning approvals under the Act have been obtained. Under the Act, planning approvals would include the submission of layout plan which by virtue of s 21B must mark out areas for open spaces.

I [73] Indeed, our conclusion that the task of designating any land within any proposed development to be a public utility land is with the planning authority upon the direction of the State Planning Committee is supported by the subsequent amendment to s 136(1) of the NLC vide AA 1332/08) which added a new para (ca) to read as follows:

- (ca) that the proprietor has agreed in his application that as a consequence of the subdivision, the land described therein which has been approved by any planning authority or body or authority specified in paragraph (c) to be used for public purpose be surrendered for such purpose in accordance with section 197; A
- [74] Having regard to the process or mechanism relating to the designation of any public utility within any proposed development as provided in the Town and Country Planning Act 1976 and ss 124A and 136 of the NLC as discussed above, it is clear that all the submissions on behalf of GK Land about the State ExCo having not imposed any specific condition in its two approvals under s 124A read with s 124(5) and that the initial approvals of the Jawatan Kuasa Pembangunan and Kewangan relating to public utility lands which include the *tapak gerai* was superseded by the two approvals were misconceived and did not hold water. B C
- [75] Based on the foregoing discussions and analysis, we would therefore answer both the questions in relation to this issue in the affirmative. D
- [76] Before we leave this judgment, and for completeness, we would like to address the other issues raised by learned counsel for GK Land in relation to this issue. E
- [77] One of the issues raised was that the document of title issued in respect of the *tapak gerai* did not impose any condition that it was to be surrendered to the state government as state land. In this case, the *tapak gerai* lot was held under a title known as HS(D) 7290, PT 18785 in the name of PTSB as registered proprietor and the only condition endorsed on the title was that ‘Tanah ini hendaklah digunakan untuk Bangunan Perniagaan (Gerai Sahaja)’ and the annual quit rent for the *tapak gerai* lot was set at RM407. F
- [78] This showed that the state government had all along intended that PTSB shall own the *tapak gerai* as the indefeasible registered proprietor subject only to the express condition endorsed on the title on its use. G
- [79] Another issue raised was that PTSB had paid the quit rent for the *tapak gerai* and receipts of such payment had been issued by the said land office (see exhs D27–D30). The acceptance of quit rent was an acknowledgement by the state government of PTSB’s ownership of the *tapak gerai*. The state government was estopped from saying that the acceptance of quit rent was a mistake on the part of the land office. H I
- [80] Finally, it was submitted that the state government had acted ultra vires and contrary to s 200 of the NLC as well as art 13(1) of the Federal Constitution when it unilaterally sought a declaratory order from the High

A Court to force PTSB/GK Land to surrender the issue document of title for the *tapak gerai* to the state government without the consent of PTSB.

B [81] Section 200 of the NLC clearly requires the surrender of any private land to be with the consent of both the registered proprietor and the state authority. In the case of *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Limpah Enterprise Sdn Bhd* [1979] 1 MLJ 135, the Federal Court held that surrender of title to any alienated land may only be made with the consent of the registered proprietor and the approval of the state authority and there is no power under the NLC to compel a registered proprietor to surrender the title to his land except by means of forfeiture for non-payment of quit rent or breach of any condition.

D [82] Consequently, the learned trial judge erred in law and in fact when he made a declaration that the *tapak gerai* belongs to the state government and further ordered the issue document of title to said land be surrendered for cancellation; and such orders ought to be set aside as null and void and unenforceable as they contravened s 200 of the NLC and art 13(1) of the Federal Constitution which prohibits forfeiture or deprivation of PTSB/GK land's property save in accordance with law.

[83] We were unable to accede to any of the submissions raised by learned counsel in respect of the aforementioned issues, for the following reasons.

F [84] On GK Land's contention that PTSB had an indefeasible proprietorship over the *tapak gerai* by virtue of the title which was issued in its name without any condition for its surrender, we found no merits in this argument.

G [85] As rightly pointed out by learned counsel for the respondents, pursuant to the State ExCo's two approvals made pursuant to s 124A, only 682 units of residential and shophouses were approved for the development by PTSB. PTSB was fully aware that upon subdivision of the master land, it was only entitled to the 682 subdivisional lots and all other public utility lands designated on the approved layout plan had to be surrendered to the state government as state land to be used for such purposes.

I [86] With regard to the issuance of titles for the ten public utility lands, as was explained by SP1 (Dato' Nazri bin Abu Bakar) in his testimony during the trial, it was a mistake made by the Jabatan Daerah dan Tanah Bera contrary to the direction of the State ExCo in its approvals to the development. However, PTSB was fully aware of the mistake made by the land office but chose to keep quiet about it. PTSB should not be allowed to profit from it.

[87] In this regard we found support in the case of *Lee Chi Min & Anor v Superintendent of Land and Survey Department, Kuching* [1981] 1 MLJ 93; [1980] 1 LNS 196 (cited by the respondents) in which Mohd Suffian LP (as he then was) had made the following observation:

Here permission to subdivide was given on condition that the two lots should be surrendered to government without any charge for use as open space. This condition was agreed to by the appellant. Government need not have issued title in regard to these two lots, or having issued them it should have registered them in their own name as owners. Instead they issued them, and in the name of the appellants without mention of the special conditions and then handed them over to the appellants. The appellants must have rubbed their eyes in disbelief when the documents of title landed on their laps. The appellants knew all this was a mistake, yet kept quiet. I do not think they should be allowed to profit from the government's mistake.

[88] In regard to PTSB's contention that acceptance of quit rent by the land office amounted to a waiver and operates as an estoppel against the state government from claiming the *tapak gerai*, we agreed with learned counsel for the respondents and learned judicial commissioner that this argument was devoid of merit.

[89] We agreed that judicial notice could be taken that acceptance of quit rent at the payment counter at the land office is automatic and the counter clerk who accepts the payment is not required to inquire into the validity or otherwise of the title before accepting such payment. Such an administrative act of a counter clerk in collecting revenue for the state where the title as shown on the computerised system is for all intents and purposes still in existence and valid on the face of it could not bind the state. If it were otherwise, a person who had obtained title to a piece of land by mistake or fraudulent means could set up the defence that the state or the previous land owner is estopped from claiming back the land due to the acceptance of quit rent by the land office.

[90] In regard to GK Land's argument that the action of the state government in seeking the declaratory orders from the High Court was an action ultra vires s 200 of the NLC and art 13(1) of the Federal Constitution, again we were unable to agree with this contention.

[91] It could not be disputed that in this case the final approved layout plan in respect of the development had designated ten areas for use as public amenities or as public places, which included the *tapak gerai*. GKL's sole witness, SD1, Mr Ong Teong Pun had admitted during cross examination that PTSB had accepted all the terms of the State ExCo's approvals on the development, including the approved layout plan.

A [92] Further, PTSB was fully aware that based on the terms of the two approvals of the State ExCo, public utility lands designated on the approved layout plan had to be surrendered to the State for such purposes, in accordance with the procedure set out in the NLC for surrender of land.

B [93] This was evidenced by the conduct of PTSB in surrendering two lots earmarked for LLN substations directly to TNB and the other seven lots to the Jabatan Daerah dan Tanah Bera. PTSB should not be allowed to blow and cold or, as commonly said, approbate or reprobate on this matter.

C [94] Taking into account the legal status of the *tapak gerai* as discussed above and the circumstances of this case in which PTSB/GK Land had refused to surrender the issue document of title of the said land despite repeated requests from the state government through the Pejabat Daerah dan Tanah vide its letters dated 28 October 2009 (exh P23) and 17 May 2010 (exh P20), we were of the view that the procedure adopted by the state government in seeking the relief of declaration and order for PTSB/GKL (which was in possession of the issue documents of title) to surrender such document was a valid action; and the High Court has the jurisdiction to grant an order to compel obedience to a decision of the state government made in accordance with the lawful exercise of its powers under the relevant laws.

F [95] We find support in our conclusion in the case of *Hoe Lee Development Sdn Bhd v Shell Malaysia Trading Sdn Bhd* [1985] 1 MLJ 267; [1984] 1 LNS 115 (cited to us by the respondents) in which Dzaidin J (as he then was) allowed the plaintiff's application by ordering the defendant (Shell Malaysia Trading) to surrender Lot No 1036 (formerly Lot 919) Section 4, Bandar Butterworth (which was previously required by the state authority to be surrendered upon an application by Shell Malaysia Trading for subdivision of its land), to the Government of Penang and the Registrar of Land Titles, Penang was to register and give effect to the court's order.

H [96] For the reasons stated above, we dismissed GK Land's appeal in Appeal No 184 with costs and affirmed the decision of the High Court.

I *Second issue: Was the learned trial judge correct in holding that GK Land's claim in the Kuala Lumpur Suit was a contractual claim based on the JVA and the question whether GK Land had any proprietary right over the tapak gerai was irrelevant in determining Mega 3 Housing's liability under the JVA?*

[97] The High Court in allowing GK Land's claim against Mega 3 Housing for breach of the JVA had made the following findings:

[37] Defendan (2) di dalam tindakan terhadap Plaintiff dalam Kes Kuala Lumpur telah membuat tuntutan terhadap Plaintiff bagi satu pampasan atas kemungkiran Plaintiff terhadap perjanjian usahasama. Perjanjian usahasama antara Plaintiff dan Defendan (1) dan Defendan (2) ialah bagi Plaintiff membangunkan Tanah Tersebut. Perjanjian usahasama di klausa (5) menyatakan tanah 'Tapak Gerai' yang ditunjukkan dalam plan susunatur tidak menjadi sebahagian daripada kawasan yang dimajukan dan menurut klausa 2 (g) bahawa plan susunatur adalah termasuk apa-apa pindaan plan yang diluluskan oleh Defendan (2) dan Pihak Berkuasa yang berkaitan. Menurut Plaintiff, sebelum membina Tangki Air atas tanah 'Tapak Gerai' tersebut beliau melalui surat bertarikh 12/6/2008 kepada Defendan (1) mencadangkan supaya Tangki Air dibina atas tanah 'Tapak Gerai' tersebut. Menurut Defendan (2) bagi pihak Defendan (1), beliau tidak pernah menerima surat tersebut dan tidak pernah memberi apa-apa persetujuan dan kelulusan atas cadangan dan pembinaan Tangki Air di atas tanah 'Tapak Gerai' itu. Dengan itu pembinaan Tangki Air oleh Plaintiff di atas tanah 'Tapak Gerai' itu tanpa kelulusan Defendan (2) telah berlaku satu kemungkiran perjanjian usahasama oleh Plaintiff. Walaupun tanah 'Tapak Gerai' itu adalah tanah yang patut diserahkan balik kepada Kerajaan Negeri, tetapi Plaintiff tetap telah mungkir perjanjian usahasama kerana isu kemungkiran perjanjian berbeza dengan isu tanah 'Tapak Gerai' sebagai kawasan kegunaan awam. Oleh itu Defendan (2) berhak pada satu gantirugi atau pampasan (seksyen 74 Akta Kontrak dan kes *Hamdan Johan & Ors v Felcra Bhd & Ors and Another Case* [2010] 3 CLJ 474 dirujuk).

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[98] The learned judicial commissioner however allowed only nominal damages to GK Land based on the following ground:

Walau bagaimanapun pembinaan Tangki Air itu dibuat bagi tujuan kegunaan penduduk dan bagi menjayakan pembangunan atas Tanah Tersebut. Pembinaan Tangki Air atas tapak yang patut diserahkan dan menjadi hakmilik Kerajaan Negeri itu tidaklah mendatangkan apa-apa kerugian kepada Defendan (1) dan Defendan (2). Dengan itu, satu pampasan yang nominal (nominal damages) patut diawardkan kepada Defendan (1) dan Defendan (2) dalam Kes Kuala Lumpur. (*Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360 dirujuk).

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[99] We are again unable to agree with the learned judicial commissioner's findings on this issue, based on the following grounds.

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[100] It is clear to us, based on its pleadings in the Kuala Lumpur Suit, that the whole basis of GK Land's claim against Mega 3 Housing for breach of the JVA was grounded on the fact that pursuant to preamble (5) read with cl 2(d) of the JVA, parties had expressly agreed that GK Land was the beneficial owner of the *tapak gerai* (having acquired it under the SPA entered into between PTSB and GK Land) and the said *tapak gerai* was expressly agreed to be excluded from the development to be undertaken by Mega 3 Housing; that Mega 3 Housing breached cl 2(d) when it purported to construct the reserve water tank on the *tapak gerai* when the approved layout plan did not envisage the siting of any

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A water tank on the said land; and that Mega 3 Housing had further breached cl 2(g) of the JVA when it amended the approved layout plan without the consent of GK Land.

B [101] As we had narrated earlier under the background facts, Mega 3 Housing opposed the Kuala Lumpur Suit and in its defence took the stand, inter alia, that the *tapak gerai* did not belong to GK Land but was a public utility land pursuant to the state government's approval for the development; that recital (5) of the JVA which purports to confer beneficial ownership of the *tapak gerai* to GK Land was unenforceable since the land in fact belonged to the state government; that cl 2(d) which purported to give GK Land a right to GK Land to commercially develop the *tapak gerai* was misconceived since the *tapak gerai* belonged to the state government and not GK Land; that the GK Land had no right, whether legal or contractual, to claim for any loss or damages it had purportedly suffered (which was denied) caused by the presence of the reserved water tank on the *tapak gerai* which was a public utility land; that Mega 3 Housing was merely complying with its contractual obligation under cl 8 of the JVA which requires it as the developer to conform with, inter alia, the requirements of any local or other authority in respect of the development; and that Mega 3 Housing did not breach 2(g) of the JVA when it applied to amend the approved layout plan as such action was necessary to reflect the true position of the reserved water tank on the approved layout plan in compliance with the law relating to layout plan, and the amendment to the approved layout plan was indeed approved by the Pejabat Tanah Daerah Bera (in its capacity as the local planning authority for the district of Bera) on 25 February 2009.

F [102] It is thus crystal clear, based on the respective pleadings of the parties that GK Land's claim in the Kuala Lumpur Suit would stand or fall depending on whether GK Land was in fact and in law the beneficial owner of the *tapak gerai*.

G [103] We had earlier made a determination, under the discussion relating to the first issue, that the *tapak gerai* was in fact and in law a public utility land and had to be surrendered to the state for such purpose.

H [104] With regard to preamble (5) the evidence before the court showed that on the date of the SPA for the purchase of the master land by GK Land from PTSB, all the approvals for the development had already been finalised. This would mean that GK Land bought the master land subject to the terms of the approvals and were bound by them.

I [105] Consequently, we agreed with Mega 3 Housing that preamble (5) of the JVA which declared GK Land as the beneficial owner of *tapak gerai* and cl 2(d) which allegedly conferred exclusive right to GK land to commercially develop the *tapak gerai* were ineffectual to confer such a right on GK Land.

[106] We further agreed that since the GK Land had no proprietary, legal or beneficial, interest in the *tapak gerai*, it could not claim to have suffered any loss/damage by reason of the amendment to the approved layout plan and/or the construction of the reserved water tank on the said land.

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[107] We also agreed with Mega 3 Housing that in view of cl 8 of the JVA, Mega 3 Housing could not be said to have breached the JVA as the construction of the reserved water tank was clearly at the direction of Jabatan Bekalan Air which Mega 3 Housing as the developer was legally and contractually obliged to comply.

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[108] For the reasons stated above, appellate intervention was required for us to set aside the findings and conclusions of the learned judicial commissioner on this issue.

Third issue: Was the learned judicial commissioner correct in holding that Mega 3 Housing had no locus standi to seek the reliefs in the Temerloh Suit that the tapak gerai was state land and it had to be surrendered to the state government as state land?

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[109] The locus standi issue was raised by GK Land in its defence to the Temerloh Suit in which it was averred that since Mega 3 Housing had in its statement of claim acknowledged that the *tapak gerai* belonged to the Pahang State Government and Mega 3 Housing had no beneficial or legal interest in the land, therefore Mega 3 Housing had no locus standi to seek the declaration on the status of the *tapak gerai* and Mega 3 Housing was a mere busy body when it filed the Temerloh Suit.

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[110] GK Land's contention found favour with the learned judicial commissioner.

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[111] In dismissing the Temerloh Suit on the issue of locus standi, the learned judicial commissioner held that Mega 3 Housing had no special interest in the status of the *tapak gerai* and was fighting the cause of the state government, as evidenced by his statement that 'Kepentingan mengenai tanah 'Tapak Gerai' itu secara tulennya adalah antara pihak Defendan (3) dengan Defendan (1) dan (2) yang secara langsungnya menyentuh hak yang perlu dilindungi oleh pihak-pihak. Pihak Plaintiff bukanlah pihak yang mempunyai hak yang perlu dilindungi dalam menentu putuskan tapak tanah 'Tapak Gerai' tersebut yang sekaligus tidak mempunyai kepentingan atasnya'.

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[112] In this connection, the learned judicial commissioner had relied on the principle laid down in the Federal Court in *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 that 'a plaintiff should have a special interest in the

A proceedings which he institutes in order to have *locus standi* to take up any action’.

[113] We were inclined to agree with the submission of learned counsel for Mega 3 Housing that the learned judicial commissioner erred in approaching the matter as a locus or jurisdictional issue.

[114] To our minds, the issue here is not whether Mega 3 Housing had locus standi to initiate the Temerloh Suit but whether it had a cause of action against the defendants in the said suit.

[115] It was patently clear to us that in the Temerloh Suit Mega 3 Housing was not pursuing a public interest litigation or a public law remedy. Neither was it seeking to vindicate or protect the interest of the state government.

[116] On the contrary, Mega 3 Housing was fighting its own cause in the light of the claim by GK Land against it in the Kuala Lumpur Suit where the actual legal status of the *tapak gerai* had a direct bearing on its liability to GK Land. It thus had a real and genuine interest in having the status of the *tapak gerai* determined by the court and consequently a cause of action against the defendants in the Temerloh Suit.

[117] Therefore, in filing the Temerloh Suit for the court to determine the status of the *tapak gerai* and to compel the PTSB/GK Land to deliver up the issue document of title for the *tapak gerai* for cancellation, Mega 3 Housing was not a busy body but has a legitimate interest in the relief applied for.

[118] The learned trial judge in his judgment had observed that Mega 3 Housing’s Temerloh Suit was a duplicity because the Pahang State Government had already intervened in the Kuala Lumpur Suit to seek a similar declaration. In this connection, Mega 3 Housing had explained that when it initiated the Temerloh Suit the state government had yet to intervene in the Kuala Lumpur Suit while PTSB (under whose name the document of title of the *tapak gerai* was registered) was not made a party to the suit by GK Land. It would thus be futile for Mega 3 Housing to seek such a declaration in the absence of PTSB and the state government. It was thus forced to file the action in the Temerloh High Court. The court was informed that the state government, which initially declined to be added as a co-plaintiff in the Temerloh Suit, had subsequently supported Mega 3 Housing’s action in the Temerloh Suit.

[119] On the learned judicial commissioner’s comment that the court had no power to grant the same declaratory order to two different parties in two different suits, our view is that since the Kuala Lumpur Suit and the Temerloh Suit were heard together, it would have sufficed for the High Court to have

made one declaratory order in regard to the status of the *tapak gerai* and such a declaratory order would have served the purpose of Mega 3 Housing in filing the Temerloh Suit and the question of duplicity would not have arisen.

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[120] For the reasons stated above, we find that appellate intervention was required for us to reverse the learned judicial commissioner's finding on this issue.

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ORDERS AND COSTS

[121] In the light of our above findings and conclusions, we made the following orders:

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- (a) GK Land's appeal in Appeal No 184 was dismissed with costs and the decision of the High Court was affirmed;
- (b) Mega 3 Housing's cross-appeal in Appeal No 184 was allowed with costs and the decision of the High Court awarding damages to GK Land to be assessed by the court was set aside;
- (c) Mega 3 Housing's appeal in Appeal No 185 was allowed with costs and the order of the High Court was set aside; and
- (d) after hearing parties, we fixed costs at RM10,000 in favour of Mega 3 Housing and at RM 5000 in favour of the Pahang State Government in respect of each appeal. We further ordered deposits to be refunded.

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Order accordingly.

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Reported by Ashok Kumar

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